

September 24, 2010  
UNITED STATES COURT OF APPEALS  
Elisabeth A. Shumaker  
FOR THE TENTH CIRCUIT Clerk of Court

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 10-6196

KENT ALAN POWERS,

Defendant - Appellant.

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**ORDER**

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Before **BRISCOE**, Chief Circuit Judge, and **MURPHY** and **O'BRIEN**, Circuit Judges.

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This matter is before the court on the government's motion to dismiss. Although ordered to file a response, the defendant did not do so. The government's motion is **GRANTED**.

In a criminal appeal, the defendant's notice of appeal is to be filed within 14 days of entry of judgment. *See* Fed. R. App. P. 4(b)(1)(A). This rule is an "inflexible claim-processing rule[], which unlike a jurisdictional rule, may be forfeited if not properly raised by the government." *United States v. Garduno*, 506 F.3d 1287, 1291 (10th Cir. 2007) (internal quotation omitted). Here, the

defendant filed his notice of appeal four days late.

The government properly raised the timeliness issue in its motion to dismiss. Because the government timely objected to [the defendant's] late notice of appeal, this court is bound to dismiss the appeal." *Garduno*, 506 F.3d at 1292.

**APPEAL DISMISSED.**

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter  
Deputy Clerk/Jurisdictional Attorney